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House Bill _____
By _____

Senate No. SB1293
By Kyle

AN ACT to amend Tennessee Code Annotated, Title 63, Chapter 6, relative to the Board of Medical Examiners licensure requirements, quorum, membership and disciplinary provisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE

SECTION 1. Tennessee Code Annotated, Section 63-6-207, is amended by deleting paragraph (b) in its entirety and renumbering the remaining paragraphs accordingly.

SECTION 2. Tennessee Code Annotated, Section 63-6-103, is amended by deleting subsection (b) in its entirety and substituting instead the following:

(b) For purposes of conducting administrative business and promulgating rules and regulations, six (6) members shall constitute a quorum and the board shall meet at least twice a year to conduct such administrative business. A majority vote of the members present at the business meetings shall be required to authorize board action on any board business. For purposes of contested case hearings, and disciplinary matters, three (3) or more members shall constitute a quorum and the board president is authorized, when it is deemed necessary, to split the board into panels of three (3) or more each to conduct contested case hearings or disciplinary matters. A majority vote of

the members present on any duly constituted panel shall be required to authorize board action in disciplinary matters and contested case hearings. The board president shall have the authority to appoint board members to serve as necessary on the panels regardless of the grand division from which the appointed member was chosen or his or her status as a physician or non-physician member. The existence of a non-physician board member creates no rights in any individual concerning the composition of any panel in any disciplinary matter or contested case hearing. Notwithstanding the provisions of Tennessee Code Annotated, Section 4-5-314 (e), to the contrary, unavailability of a member of any panel before rendition of a final order shall not require substitution of another member unless the unavailability results in there being less than the quorum required by this section for contested case hearings or disciplinary matters. Any substitute required shall use any existing record and may conduct any further proceedings as is necessary in the interest of justice.

SECTION 3. Tennessee Code Annotated, Section 63-6-214 is amended in subsection (b) (12) by deleting the semicolon after the word "disease" at the end of the subsection and adding the words and punctuation ", or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition;".

SECTION 4. Tennessee Code Annotated, Section 63-6-214 is amended by adding the following new subsection (g):

(g) For purposes of actions taken pursuant to § 63-6-214 (b) (4), (12) and (13) or any other subsection in which the standard of care is an issue, the board is entitled to rely upon its own expertise in making determinations concerning the standard of care and board members are not subject to voir dire concerning such expertise. Expert testimony is not necessary to establish the standard of care. The standard of care for such actions is a statewide standard of minimal competency and practice which does not depend upon expert testimony for its establishment. Provided however, to sustain

actions based upon a violation of this standard of care the board must, in the absence of admissions or other testimony by any respondent or his or her agent to the effect that the standard was violated, articulate what the standard of care is in its deliberations. The provisions of §29-26-101 et. seq. and specifically, §29-26-115 concerning the locality rule do not apply to actions taken pursuant to this chapter.

SECTION 5. Tennessee Code Annotated §63-6-207 is amended by adding the following new subsection (g):

(g) The board, upon receipt of an applicant's, or current licensee's, documentation or information responsive to the licensure application, whether original or renewal, shall not release any otherwise privileged information on an applicant's licensure application. The applicant's submission of any such otherwise privileged information shall not be deemed by any state court to be a waiver of such privilege for any purpose. Further, the Board of Medical Examiners is not authorized to release such information to third party insurers, hospitals, or any other entity.

SECTION 6. This act shall take effect upon becoming law the public welfare requiring it.